THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL No. 1631 OF 2005

Date : 28-01-2006

Between:

B.Kantha Reddy.

.....Appellant

and

The Mandal Development Officer-cum-Additional District Election Authority, Manopad Mandal, Mahabubnagar District & Others.

.....Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL No.1631 of 2005

JUDGMENT : (Per Hon'ble Sri Bilal Nazki, J)

The appellant had filed writ petition No.11229 of 2005 challenging the judgment of Junior Civil Judge (Election Tribunal under A.P.Grampanchayat Act, 1994) (hereinafter referred to as 'the Tribunal'), Alampur in O.P.No.6 of 2001, dated 04.5.2005. The writ petition was dismissed, hence the Appeal.

While entertaining the appeal, the Court suspended the operation of the order of the Tribunal, therefore the vacate stay petition has also been filed, being W.A.V.M.P.No.3289 of 2005. The matter has been heard finally.

The parties shall be referred to, as they appear in the writ petition.

Respondent No.4 E.Prakash Goud, filed an Election Petition before the Tribunal, seeking a declaration that writ petitioner was disqualified to contest for the Sarpanch post to Amaravai village. He sought a direction that the election of writ petitioner was null and void.

The writ petitioner as well as respondent No.4 filed nominations in pursuance to the Election Notification for the post of Sarpanch to Amaravai village. Respondent No.4 raised objections at the time of scrutiny of nominations orally and also in writing to the effect that the writ petitioner was disqualified to contest for the post of Sarpanch, as the writ petitioner had three children as on the date of contesting the election, last child was born on 5.11.1996.

The writ petitioner denied that any child was born to him after cut off date and in fact, he had three children and his last child was born on 29.12.1994, and that was within one year from the cut off date in terms of Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act'). Therefore, he was not disqualified to contest the post of Sarpanch.

Basically this was a question of fact as to whether the son of writ petitioner was born on 5.11.1996 or 29.12.1994. The Tribunal framed five issues. The first issue is not important, as it related to the controversy with regard to the name of the wife of the writ petitioner. Second issue was, whether the 3rd child of the writ petitioner was born on 29.12.1994 as alleged by the petitioner or on 5.11.1996 as alleged by respondent No.4. This issue was decided against the writ petitioner by the Tribunal and the finding was upheld by the learned Single Judge.

The learned counsel appearing for the appellant/writ petitioner submitted that the provisions relating to restriction of having more than two children came into effect on 30th of May, 1994 and the candidate having more than two children, was disqualified from contesting the election after one year of coming into force of the provision. He submitted that the learned Single Judge and the Tribunal placed onus on the appellant/writ petitioner to show that his third child was born before the cut off date, although the onus should have been on the person who challenged his election. Section 19(3) of the Act lays down –

> *"A person having more than two children, shall be disqualified for election or for continuing as member :*

Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this clause referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this clause ;

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this clause for so long as the number of children he had on the date of such commencement does not increase ;

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing."

Sub-section (3) of Section 1 of the Act lays down that the Act shall come into force on such date, as the Government may, by notification in the Andhra Pradesh Gazette appoint. A notification was published in the Gazette on 25.5.1994, notifying the date – 30th of May, 1994 as the date on which all the provisions of the Act shall come into force in the whole of the State of Andhra Pradesh. Reading Section 19(3) of the Act, with the notification, it becomes clear that if a third child was born after 29.5.1995, the person would be disqualified from contesting the elections. The allegation against the appellant was that his third child was born on 5.11.1996 i.e. much after the cut off date.

We have gone through the order of the Tribunal and also the judgment of the learned Single Judge.

The writ petitioner admitted before the Tribunal that –

1. his wife was native of C.Belgal and daughter of one Koru Nalla Reddy.

2. his wife gave birth to their 3rd child at her parents house at C.Belgal.

3. and the same was informed to the village Talari by her mother.

4. the father's name of the child is Kantha Reddy.

Evidence was led by the writ petitioner before the Tribunal and he examined the Assistant Panchayat Secretary of C.Belgal and he deposed that wife of the writ petitioner Venkateswaramma alias Bojjamma gave brith to a male child on 5.11.1996. He also stated that Bojjamma was daughter of Koru Nalla Reddy and wife of the 1st respondent i.e. the writ petitioner. Applicant before the Tribunal also filed six documents Exhibits A-1 to A-6. Ex.A-4 was the birth extract issued by the Mandal Revenue Officer, C.Belgal, Ex.A-5 was the sterilization certificate issued by Civil Surgeon, Government Hospital, Yemmiganoor, certifying that Smt.Venkateshwaramma wife of B.Kantha Reddy, C.Belgal had undergone tubectomy operation at Government hospital, Yemmiganur on 19.11.1997 and she had three children. There was also the record produced to show that the wife of the writ petitioner had undergone double puncture laporotomy on 19.11.1997 and she had, at that time, three living children – two male and one female. The age of last child at that time was one year and fourteen days. No rebuttal evidence was produced by the writ petitioner before the Tribunal, but he only examined himself as RW-1 and deposed that his child was born on 29.12.1994 at C.Belgal village and Mandal, Kurnool District. On the next day the birth of his child was registered with the authority concerned. He filed a Date of Birth Certificate issued by Mandal Revenue Officer on 27.7.2001, as Ex.B-1. But nobody was produced to prove this certificate.

At the instance of the writ petitioner, the Birth Register pertaining to the year 1994 of C.Belgal village, was also produced. The first part of it contain the Registration of Births for the month of December 1994. The learned Tribunal found that at Serial No.24, a birth registration was made on 30.12.1994, showing that a male child was born on 29.12.1994, namely Muralidhar. The father's name was shown as Kantha Reddy and mother's name was shown as Venkateshwaramma. The Tribunal found some interesting entries from this Birth Register. In para 31, it noted that on a perusal of Sl.Nos.22 to 24, it found –

1. Serial No.22 a registration was made on 26.12.1994 to a child born on 21.12.1994.

2. Serial No.23 entry was made about birth of a child on 27.12.1994 and the child had born on 22.12.1994.

3. Serial No.24, which was claimed to be an entry of the child of the writ petitioner, was made on 30.12.1994, as the child was born on 29.12.1994.

The Tribunal found that these three entries were not signed by either informant or by the registering authority. The Tribunal also noted that Ex.B-2 had not been proved and the petitioner had not adduced any evidence, nor given any explanation for his non-examination of the authorities, who had registered the date of birth of his child.

During the hearing of this appeal, the learned counsel for petitioner also filed a photocopy of a date of birth certificate issued by Headmistress of Jagruthi U.P.School, which shows that the date of

birth of B.Murali S/o.B.Kantha Reddy, was 29.12.1994 as per the School record. But obviously, this certificate could not be believed, because it had been issued on 26.10.2005 i.e. when the case was being heard by us. If the appellant had admitted his child to the school, what stopped him in producing the certificate before the Tribunal.

Since the facts could not be re-evaluated by this Court, particularly in a writ appeal, we do not find any merit in this appeal. The evidence we have discussed is only discussed for the purpose of examining whether the onus had been placed on the writ petitioner or on respondent No.4. The onus was on respondent No.4, who discharged his onus and it shifted to the writ petitioner, who could not demolish the case of respondent No.4.

Appeal is accordingly dismissed. No order as to costs.

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W.A.V.M.P.No.3289 of 2005

In view of the judgment in the main Appeal, no orders are needed to be passed in this petition, which is accordingly dismissed.

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(BILAL NAZKI, J)

28-01-2006

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(R.SUBHASH REDDY, J)

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